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LAVERNE HIGGINS

v.

DOCKET NO. 42-88-209

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Laverne Higgins, is employed by the Randolph County Board of Education (Board) as a teacher and is currently assigned to Elkins Junior High School. Ms. Higgins filed a level one grievance on August 26, 1988 in which she alleged violations of county policies EDB and EBA when she was denied a transfer to the position of librarian. The grievance was denied at levels one through three and was appealed to level four on November 2. A level four hearing was conducted on February 22, 1989 and proposed findings of fact and conclusions of law were submitted by March 20.

On August 2, 1988 a position vacancy for librarian at Elkins Junior High School was posted. An interview committee consisting of the county personnel director and the school principal conducted the selection process. Interviews conducted for the grievant and the only other applicant, Linda Freeman, consisted of ten standard questions

which included a recitation of their education and experiences. The candidates were rated on each response as excellent (10 points), good (7 points), average (4 points) or fair (1 point). Their scores were averaged with Ms. Freeman receiving 84 points and the grievant 70 points. Ms. Freeman was subsequently recommended to the Board and hired for the position.

The grievant argues that she was the most qualified applicant as she has taught library science skills in her English classes since 1972 and served as "Service Librarian" for five years.¹ She asserts that her knowledge, practical experience and familiarity with secondary students and curriculum are also advantageous while the successful applicant was limited to elementary level experience. Ms. Freeman had been employed by the Board for three years in the capacity of librarian and had been employed for three years in Ohio in the area of library science.²

¹It is not clearly established that the Board has approved a position title of "service librarian". The grievant does work in the school library one period per day to allow the librarian a planning period. The grievant states that while in this capacity she does all of the regular library work with the exception of ordering books and handling financial matters (Level II T. p 5).

²The successful applicant's background is exceptionally vague but in piecing together available information it seems that she had been employed by the Board as an elementary school librarian for at least three years but had been released from employment at the end of the 1987-88 school term as a result of a reduction in force.

Both members of the interview team testified that they believed Ms. Freeman to be the most qualified applicant for the position as evidenced by the well thought out and detailed responses which she gave to the interview questions, her experience and professional activities in the field of library science. By comparison the grievant had very limited experience in library science and had failed to demonstrate progressive development or expertise within that field during the interview.

Based upon the recent employment of Ms. Freeman as a full-time librarian, her seven years of experience in the field of library science and her more complete and detailed responses to interview questions, indicating more familiarity with the subject matter and preparation to undertake the duties of the position, the determination that she was the most qualified applicant cannot be deemed erroneous.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The position of librarian at the junior high school was posted in August 1988. The grievant and Linda Freeman were interviewed by a team consisting of the county personnel director and the school principal.

2. The interview team asked each applicant ten standard questions and rated their responses as excellent, good, average or fair. Each category was assigned a number of

points which were averaged to determine the most qualified applicant.

3. The grievant has been employed by the Board since 1972 and is presently assigned to Elkins Junior High School as an English teacher. In addition to her teaching duties the grievant relieves the librarian for one period per day.

4. While working in the library the grievant performs many of the duties of a regular librarian but she does not order materials or assist in any financial matters.

5. The successful applicant had been employed by the Board as a librarian for three years, had earned an additional three years experience in library science while employed in Ohio and during the interview demonstrated more knowledge and better application of her skills than did the grievant.

Conclusions of Law

1. Decisions concerning the filling of professional positions must primarily be based on qualifications and seniority has a bearing when applicants have otherwise equivalent qualifications or the differences in qualification criterion are insufficient to form a basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel but this discretion must be exercised reasonably and in a manner which is

not arbitrary and capricious. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1981).

3. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988).

4. By virtue of greater and more recent experience as a librarian and her demonstrated knowledge and ability, Linda Freeman was the more qualified applicant for the position at Elkins Junior High School. The grievant has failed to prove by a preponderance of the evidence that the Randolph County Board of Education's decision to award Ms. Freeman said position was otherwise arbitrary or capricious.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Randolph County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: April 28, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER